IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 3270 of 2007()

CRA.662/2002 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY
MC.11/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR
CC.73/97 OF JFCM, MATTANNUR

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REVN. PETITIONER:

K.PRAKASAN,CHANDRALAYAM,VELLUVALIYAL
P.O. CHATTUKAPARA,KOODATI, KANNUR.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS:

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1. A.C.RAMANI,W/O. RAMAKRISHNAN PARAKODE HOUSE, PATTANUR.

2. A.C.VINOD,PARAKODE VEEDU, PATTANUR.

3. SUNDARAN FINANCE LTD, LTD.,

4. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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**Crl. R.P. No. 3270 OF 2007**

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Dated this the 10th day of September, 2007

O R D E R

The revision petitioner was the accused in C.C.No.73/97 on the file of the JFCM, Mattannur. The 1st respondent herein (A.C.Ramani) was the complainant in that case in which she alleged theft of a stage carriage bus bearing registration No.KL 13/7992. The bus was seized from the possession of the revision petitioner during investigation. Upon the motion made by the complainant, interim custody of the bus was given to the complainant Ramani on her executing a bond for Rs.4,00,000/- (Rupees four lakhs only) with a direction to produce the vehicle as and when required. Subsequently the revision petitioner was discharged by the court. Thereupon in proceedings under section 452 Cr.P.C. the trial court straightaway directed the complainant to deposit Rs.4,00,000/- (Rupees four lakhs only) in court for payment to the revision petitioner who was entitled to the value of the bus since the bus had been in the meanwhile seized and sold by

the financier. Aggrieved by the order passed by the trial court on 15.11.02 the complainant preferred an appeal as Crl.Appeal No.662/02 before the Sessions Court, Thalassery. As per judgment dated 16.6.07 the Additional Sessions Judge (Adhoc-III), Thalassery confirmed the finding of the trial court that the revision petitioner was entitled to the value of the bus and that there was violation of the bond committed by the complainant in not producing the bus before court. That court, however, did not sustain the order dated 15.11.02 passed by the trial court since according to the lower appellate court no proceedings were initiated against the complainant under section 446 Cr.P.C. for violation of the bond. It is the said judgment which is assailed in this revision by the accused.

2. The learned counsel for the revision petitioner submitted that the lower appellate court having confirmed the finding of the trial court that the revision petitioner is entitled to the value of the bus and that the complainant had committed default in producing the bus before court, should have

confirmed the direction issued by the trial court to the complainant to deposit the sum of Rs.4,00,000/- (Rupees four lakhs only) for payment to the revision petitioner.

3. I am afraid that I cannot agree with the above submission. It is true that the revision petitioner, who was entitled to custody of the bus, had to be compensated by paying the value of the bus which in the meanwhile had been dismantled and sold by the financier. It is also true that the complainant, who had taken interim custody of the bus, had committed breach of the bond executed by her in favour of the trial court by not producing the bus before the court. But before calling upon her to deposit the bond amount of Rs.4,00,000/- (Rupees four lakhs only) in court for payment to the revision petitioner, she had to be proceeded against under section 446 Cr.P.C. By not issuing a show cause notice under section 446(1) Cr.P.C. the trial court was committing an infraction of the law thereby resulting in the violation of the principles of natural justice, namely, the audi alterum partem rule. That is why the lower appellate court rightly directed the

trial court to register an M.C. against the complainant under section 446 Cr.P.C. and proceed according to law. It goes without saying that upon registering such an M.C. the complainant will be entitled to a show cause why the bond amount should not be paid by her and on her failure to show cause she will be liable to deposit the bond amount of Rs.4,00,000/- (Rupees four lakhs only) before the court for payment to the revision petitioner. This being the position in law, no interference is called for with the judgment passed by the lower appellate court.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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